BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTOPHER G. HUNDELT	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,003,683
UNITED PARCEL SERVICE	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the July 17, 2002 preliminary hearing Order of Administrative Law Judge Steven J. Howard. Respondent contends that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment and that he further failed to provide timely notice of accident.

ISSUES

(1) Did claimant suffer accidental injury arising out of and in the course of his employment on the dates alleged?

(2) Did claimant provide timely notice of accident as required by K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury to his low back from December 2001 through April 22, 2002. Claimant, a driver for respondent, spends a good deal of time hauling packages weighing up to 150 pounds. Claimant testified that his symptoms first began during the peak Christmas season, but that the condition continued to worsen through April 22, 2002, when he advised his employer that he needed medical treatment.

Respondent contends claimant did not prove that his symptoms arose from his work, as his initial treatment by chiropractor Stephen Gradwohl did not indicate that the condition was related to his work. Similarly, respondent argues the initial information provided to Glenn M. Amundson, M.D., failed to indicate a history of injury from his work.

However, the medical notes of Dr. Amundson from February 8, 2002, while indicating claimant's problems come from sitting and lying down, do state that his problems interfere with his ability to work "as he is a UPS driver."

Additionally, the June 2, 2002 letter from Dr. Amundson to claimant's attorney states that claimant's condition was "initiated and aggravated (caused and contributed to) by his work duties at UPS."

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. *See* K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record. K.S.A. 2001 Supp. 44-508(g).

In order for a claimant to collect workers' compensation benefits under the Workers Compensation Act, he must suffer an injury arising both out of and in the course of his employment. *See* K.S.A. 44-501.

> The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).
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> The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

The evidence in this case is that claimant's work with respondent both initiated and aggravated his ongoing back condition. The fact claimant failed to advise his chiropractor

early on in the treatment of a work-related connection does confuse the record, but does not change this Board's opinion.

K.S.A. 44-520 obligates a claimant to provide notice of accident within ten days of that accident. This obligation does become somewhat confusing when dealing with microtrauma situations where the date of accident may occur over an extended period of time.

The Kansas Supreme Court, in Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999), reaffirmed the earlier findings in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), that an appropriate date of accident to be utilized in microtrauma cases is the last day of work. While it is acknowledged Treaster dealt primarily with carpal tunnel syndrome, rather than a back condition as found here, it nevertheless applies to microtrauma injuries which occur over long periods of time, regardless of the body part involved.

Here, the Board has found that claimant suffered a series of accidents through April 22, 2002. It is acknowledged that claimant advised respondent on April 22, 2002, of his work-related accident and how his low back symptoms are related to his employment duties with respondent. The Board, therefore, finds that claimant did provide timely notice of accident pursuant to K.S.A. 44-520 under the date of accident guidelines set forth in Treaster and Berry.

The Board, therefore, finds that the Order of the Administrative Law Judge awarding claimant benefits for an accidental injury occurring through April 22, 2002, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated July 17, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

c: Keith L. Mark, Attorney for Claimant
Stephanie Warmund, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation